there are exceptions to this rule; the verdict of the jury must be unanimous; a failure to request a directed verdict waives the right to review the evidence on appeal;[2] the appellate practice is entirely different. A book has just been published in which the learned author points out the above and numerous other differences.[3] Hardly a week passes without new cases arising. In Maxey v. United States [4] a conviction was reversed because under the state practice there was admitted the testimony of a witness who had been convicted of a felony. In civil cases in the Federal Court state rules govern as to competency of witnesses, but not in criminal cases. It is true that Congress has abolished the disqualification of parties and other interested persons as witnesses but to find what other disqualifications still exist in trying a criminal case in the Federal Court, resort must be had to the long common law list of disqualifications with the exceptions thereto, a dreary mass of obsolete rules which older practitioners have succeeded in forgetting and the younger generation have never learned.

In Stratton's Independence, Limited v. Howbert,[5] the court acts on the rule that where both parties move for a peremptory instruction the case is taken from the jury and decided by the court.

When we consider that the question whether the state practice shall be followed in a particular case is dependent on acts of Congress, rules of the Supreme and other Federal Courts, Federal decisions, and the wide discretion of the particular judge, it would seem as if the broad highway of a modern, simple and uniform set of rules would be easier to travel than the present road where pitfalls lurk at every step. Of course the complete fusion of law and equity may be impossible in the Federal Courts without a constitutional amendment,[6] but the path from one to the other can be made short and easy.

A. M. K.

Mining Law: Federal Corporation Tax: Federal Income Tax.—The question whether mining corporations are subject to the federal corporation tax and also whether the value of ore extracted from mining property is property allowable as depreciation in estimating the net income of a corporation for purposes of federal taxation [1] has perplexed mine operators and federal officials for some time.[2] The Supreme Court of the United States has recently spoken the final word on the question

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[2] Joplin & P. Ry. Co. v. Payne, (1912) 194 Fed. 387.
[3] Simkins, A Federal Suit at Law.
[4] (1913) 207 Fed. 327.
[5] (1912) 207 Fed. 419.
[6] Simkins, A Federal Equity Suit, 2nd ed. p. 3.
[1] See Corporation Tax Act of August 5, 1909, (36 Stat. 11, 112).
[2] See U. S. v. Nipissing Mining Co., 202 Fed. 803, which held that the value of ore in place could be deducted, while Stratton's Ind. v. Collector etc., (1912) 207 Fed. 419, (Treasury Decisions, 1796) held just the reverse.

as to whether mining corporations are contemplated by the Act of 1909.[3] The argument was made by the mining company claiming exemption from the tax that mining corporations engaged solely in mining upon their own property have but one kind of assets, the ordinary use and enjoyment of which results in waste and that in mining it is merely converting its capital assets from one form into another and hence is not "engaged in business" within the meaning of the act. The Court recognized the obviously peculiar character of mining property which at first may have a prospective value only, folfowed by discovery, extraction, and then complete exhaustion of the mineral content, but held that such theoretical distinctions between capital and income were of little aid. The conducting of mining operations and transmitting realty into personalty of a marketable form is essentially a manufacturing process and the transaction is indubitably "business" and the gains derived therefrom "income," for "income may be defined as the gain derived from capital, from labor, or from both combined, and here we have combined operations of capital and labor." The Court called attention to the alleged inequality resulting from exhaustion of capital which is also true of earnings of the human brain and hand unaided by capital and of earnings of corporations producing patented articles which will be profitable only for a limited time and yet such earnings are commonly dealt with in legislation as income. It also held that Congress has the power to fix upon gross income, without distinction as to source, as a convenient measure of the business transacted, and it is immaterial whether the income arises from a business that theoretically or practically involves a wasting of capital.

The Court did not, under the facts presented, feel called upon to determine the question as to whether or not an estimate of depreciation, when allowable, may properly be based upon the depletion of the ore supply. It did hold, however, that all of the proceeds of mining remaining after paying the bare outlays of the business could not be charged up as depreciation, for this would only be another way of declaring that mining corporations are exempt from the tax.

The recent "Income Tax" (approved October 3, 1913) answers this question, however, by providing that net income shall be ascertained by deducting from the gross amount of income of corporations: " . . . . in the case of mines a reasonable allowance for depletion of ores and all other natural deposits, not to exceed 5 per centum of the gross value at the mine of the output for the year for which the computation is made. . . . . "

W. E. C.

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[3] Stratton's Independence Ltd. v. F. W. Howbert, Collector of Internal Revenue, etc., decided December 1, 1913.